IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE BENSINGER,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	No. 00-CV-5037
DR. NORMAN E. HOLLANDHULL, et al.,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J. December 18, 2001

Plaintiff Bruce Bensinger ("Plaintiff"), a prisoner at the State Correctional Institution at Graterford ("Graterford") filed this civil rights action under 42 U.S.C. § 1983, alleging his Eighth Amendment rights were violated because he was denied access to mental health treatment when he was not placed in Graterford's Mental Health Unit upon his request. Plaintiff, who is a frequent filer before this Court, asserts this action against the Superintendent of Graterford, Donald T. Vaughn ("Vaughn"), the Manager of the Mental Health Unit, Skip Fields ("Fields"), Lt. Charles Crawford ("Crawford"), and Dr. Norman E. Hollandhull ("Hollandhull").[1] Plaintiff seeks a declaratory judgment that Defendants violated the United States Constitution and state law, injunctive relief, and compensatory and punitive damages. Presently before the Court is Defendant Hollandhull's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons stated below, the Motion is **GRANTED** and the action is **DISMISSED WITHOUT PREJUDICE** pursuant to 42 U.S.C. § 1997(e)(a).

1. Defendant Vaughn's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) was granted by Order of this Court dated April 17, 2001 because the complaint did not set forth any specific allegations that linked him to the any denial of medical treatment or to any supervisory liability.

I. STATEMENT OF FACTS

Plaintiff filed his complaint October 25, 2000. In describing the administrative procedures that he followed to resolve the issues described in the complaint, Plaintiff alleged that "on 7-19-2000" he asked prison authorities to "please give me my mental health treatment on the united or sensed me to a state hospital." In response, he was told that "Doctor Hollandhull will make all rulings on being put in the M.H.U. or sent to the hospital." Subsequently, Plaintiff alleged, "on 7-28-2000 I did appeal to Camp Hill and Camp Hill upheld Graterford ruleing."

On April 30, 2001, Defendant Hollandhull filed a Motion to Dismiss that alleged, inter alia, that Plaintiff's complaint did not properly allege or demonstrate exhaustion of administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997(e)(a). Furthermore, Defendant Hollandhull attached an affidavit from Graterford Health Services Administrator Frank Botto in which he certified that Plaintiff did not file any "grievances concerning medical care" during the relevant time period.

On May 24, 2001, Plaintiff filed a response to Defendant Hollandhull's Motion to Dismiss, asserting, inter alia, that "Plaintiff Bruce Bensinger did use all of his administrative remedies as this Court can see by copies of Plaintiff's grievance marked Exhibit 1,2,3 or at least tried to use all of Plaintiff's administrative remedies." Plaintiff attached three "Official Inmate Grievance" forms to his response. All three forms are white in color, indicating they are "Facility Grievance Coordinator Cop[ies]" as opposed to "Inmate Cop[ies]." None were assigned an identifying Grievance Number. None contain the signature of the Facility Grievance Coordinator or any other mark indicating receipt by that or any other prison official or appellate authority.

On June 13, 2001, Defendant Hollandhull filed a Reply which argued that these exhibits fail to demonstrate that any grievance or appeal of Plaintiff's was filed, heard, or ruled upon.

II. LEGAL STANDARD

Although Defendant Hollandhull has filed a Motion to Dismiss, since both parties have attached and referred to materials outside the pleadings, the Court will treat the motion as one for summary judgment. Fed. R. Civ. P. 12(b). A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). The nonmoving party, however, cannot "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. Fireman's Ins. Co. v. Du Fresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in

support of the nonmoving party's position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is plain that "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323 (quoting Fed. R. Civ. P. 56(c)).

III. DISCUSSION

In its Motion, Defendant Hollandhull alleges, inter alia, that Plaintiff's complaint does not properly allege or demonstrate exhaustion of administrative remedies required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997(e)(a), and that in fact Plaintiff has not done so. That legislation provides that:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997(e)(a).

The Pennsylvania Department of Corrections has established a Consolidated Inmate Grievance Review System, DC-ADM 804. These procedures permit a prisoner to file, after attempted informal resolution of a problem, a written grievance to the Grievance

Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager; and a final written appeal may be presented to the Chief Hearing Examiner. Prisoners are also provided written dispositions of their grievances and appeals.

Complaints regarding medical treatment in prison are complaints about "prison conditions" for purposes of the PLRA. Perez v. Wisconsin Dep't of Corrections, 182 F.3d 532, 534 (7th Cir. 1999)(citing McCarthy v. Bronson, 500 U.S. 136 (1991)). See also Booth v. Churner, 206 F.3d 289, 294 (3d Cir. 2000), aff'd, 532 U.S. 731 (2001). The requirement that prisoners exhaust relevant administrative remedies before filing suit is mandatory and warrants dismissal without prejudice, even if such exhaustion is futile because the relief sought by the prisoner is not provided for in the administrative procedures. Booth v. Churner, 532 U.S. 731 (2001); Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000).

In this case, Defendant Hollandhull has set forth evidence that no grievance was filed by Plaintiff regarding the failure to provide medical treatment as alleged in the complaint. Particularly under these circumstances, Plaintiff must "allege and show that [he has] exhausted all available state administrative remedies." See, e.g., Payon v. Horn, 49 F. Supp.2d 791, 797 (quoting Brown v. Toombs, 139 F.3d 1102, 1103-4 (6th Cir.), cert. denied, 525 U.S. 833 (1998)). Even accepting as true the allegations in the pleadings and viewing the evidence in the light most favorably to him, Plaintiff does not meet this burden. The complaint fails to state, for example, that Plaintiff submitted a formal written grievance. Furthermore, the complaint refers to only one – and not the required two – levels of appeal that would sufficiently exhaust Plaintiff's remedies.

In his subsequent pleading, Plaintiff again fails to "allege and show" that he exhausted his administrative remedies. First, Plaintiff's statement that he "did use of all of his

administrative remedies ... or at least tried to" is simply a conclusory statement that does not allege facts permitting the Court to find that Plaintiff did so. In addition, the statement is in effect an admission, without further explanation, that Plaintiff may *not* have exhausted administrative remedies. Second, the "Official Inmate Grievance Forms" submitted to the Court by Plaintiff do not demonstrate that his administrative remedies were exhausted. As noted above, all three forms submitted are white "Facility Grievance Coordinator Cop[ies]," which would, if submitted to prison authorities, presumably have been kept by them. None were assigned an identifying Grievance Number. None contain the signature of the Facility Grievance Coordinator or any other mark indicating receipt by that or any other prison official or appellate authority. In summary, even accepting as true the allegations in the pleadings and viewing the evidence in the light most favorably to him, Plaintiff has not demonstrated that he exhausted his administrative remedies before filing suit.

IV. CONCLUSION

As a result, as mandated by 42 U.S.C. § 1997(e)(a), Defendant Hollandhull's Motion is granted and this suit is dismissed without prejudice for failure to exhaust administrative remedies.

An appropriate order follows.

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DR. NORMAN E. HOLLANDHULL, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 18th day of December, 2001, upon consideration of Defendant Norman E. Hollandhull's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6)(Docket No. 26), Plaintiff Bruce Bensinger's Response Thereto (Docket No. 29), and Defendant Hollandhull's Reply (Docket No. 33), it is hereby **ORDERED** that this case is **DISMISSED WITHOUT PREJUDICE** pursuant to 42 U.S.C. § 1997(e)(a).

It is further **ORDERED** that Defendants Skip Fields and Charles Crawford's Motion for Summary Judgment (Docket No. 34) is **DENIED** as moot.

It is further **ORDERED** that Plaintiff Bruce Bensinger's Motion for Summary Judgment (Docket No. 40) is **DENIED** as moot.

This case is **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.